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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,289

10/15/2003

Jose Barbosa Machado Neto

J92-054 US

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NOTARO AND MICHALOS
100 DUTCH HILL ROAD
SUITE 110
ORANGEBURG, NY 10962-2100

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/686,289

Applicant(s)

NETO, JOSE BARBOSA
MACHADO

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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Applicant's response received 12/1/06, to the restriction requirement mailed 8/10/06, is noted. Applicant elected Group I without traverse, but failed to elect one of Species I or II. However, upon reconsideration, and to expedite prosecution, the restriction and election of species requirement, set forth in the Office action mailed 8/10/06, is hereby withdrawn, at this time, and an action on the merits of claims 1-7 follows below.

Claim 2 is rejected under 35USC112, 2nd paragraph as being indefinite. The phrase "the meat" in line 9 lacks antecedent basis since prior to this phrase, the product is only referred to as "the product".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Hnatek (DE19646813).

In regard to claim 1, Hnatek discloses a method in which the food product is provided with markings made by a calorie producing apparatus (e.g., a laser), over at least one of the external surfaces of the food product, wherein the apparatus includes a computer (which would have a PLC) and wherein the marks or indicia are recognized visually. This is all that claim 1 positively recites. In regard to claim 5, the apparatus of Hnatek would inherently meet the functional requirements set forth in claim 5. In regard

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to claim 6, Hnatek discloses meat (among other foods). In regard to claim 7, laser etching of a surface will inherently provide marks in low relief.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of the prior art in view of Hnatek or vice versa, that is, Hnatek in view of applicant's admission of the prior art. Applicant's admission of the prior art, found on page 2 of the specification, discloses that it was, of course, conventional to provide food, season the food, cook, bake or fry the food, sterilize the food, wrap the food, refrigerate or not refrigerate the food, and heat the food, for example, in microwave ovens. If applicant chooses to continue prosecution of this application, applicant is requested to submit any references he is aware of in this regard. Applicant's admission of the prior art also discloses that it was conventional to either provide markings on the food package or on "seals" fastened directly to the product. Claim 2 differs from applicant's admission of the prior art, in that after the food is cooked, marks are engraved on the food by a heat producing apparatus, which includes a PLC. As discussed above, as evidenced by Hnatek, it was well established in the art to provide engraved markings on a food using a computer controlled laser, which meets the description recited in claim 2. To modify applicant's admission of the prior art and either add markings by laser or substitute for the prior art disclosed marking system, a method

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of marking the meat by laser for its art recognized and applicant's intended function would have been obvious in view of the art taken as a whole. Similarly, employing Hnatek as the primary reference, Hnatek discloses laser, heat engraving of marks on food products. claim 2 differs from Hnatek in the conventional steps discussed above. Applicant's admission of the prior art discloses these steps are conventional food processing steps. To modify Hnatek and add the conventional food processing steps for their art recognized and applicants intended function would have been obvious in view of the art taken as a whole.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hnatek in view of Drouillard et al (5,660,747).

In regard to claim 3, claim 3 recites that the apparatus includes a "hyper" heated metal head. It is first noted that if a claim recites a method step, such as marking a food by a calorie producing apparatus, reciting the specific apparatus in the method claim is not seen to patentably add to the specific manipulative step of providing a heat induced marking. In fact, the fact it is heat induced does not necessarily add patentable significance to the method claim. In any case, Hnatek discloses lasers to mark food, and Drouillard et al discloses the equivalency of employing either lasers or heated printing heads to mark food. To therefore modify Hnatek and substitute one conventional means to mark food for another conventional means to mark food for its art recognized and applicants intended function would therefore have been obvious.

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Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Drouillard et al who discloses food provided with markings using a heat generating system (laser or heated printing head) and a computer.

Finally, it is noted that the claims are replete with language that does not positively recite anything. For example, words such as "may", "such as", "can be", etc., are viewed as the word "optionally"; that is, claims which include these words do not include a step or element associated with these words.

The remainder of the references cited on the PTO892 forms are cited as pertinent art, showing that the art is replete with examples of methods of marking a large variety of foods with a laser or heated printing heads.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
2/1/07